

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Telecommunications Carriers Eligible to)
Receive Universal Service Support)

Kajeet Inc.)

Petition for Streamlined Designation as a)
Lifeline Broadband Provider Eligible)
Telecommunications Carrier)
_____)

WC Docket No. 09-197

**RESPONSE OF THE PUBLIC UTILITY DIVISION OF THE OKLAHOMA
CORPORATION COMMISSION TO KAJEET INC.'S AMENDED PETITION FOR
FCC DESIGNATION AS A LIFELINE BROADBAND PROVIDER ELIGIBLE
TELECOMMUNICATIONS CARRIER**

I. Background

Kajeet, Inc. ("Kajeet") filed its Petition seeking designation as a Lifeline Broadband Provider ("LBP") eligible telecommunications carrier ("ETC") on October 11, 2016. The Public Utility Division of the Oklahoma Corporation Commission ("PUD"), on October 19, 2016, filed a request to hold Kajeet's Petition in abeyance.¹ Kajeet, on November 1, 2016, filed an Amended Petition.² Kajeet's Amended Petition incorporates an Exhibit titled "Lifeline Broadband Provider Requested States (By Zip Code)" which identifies "the states and service

¹ See, *Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Application of Kajeet, Inc. for FCC Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier*, WC Docket No. 09-197. ("Request")

² See, *Kajeet, Inc. Amended Petition for Streamlined Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier*, WC Docket No. 09-197 (filed November 1, 2016) ("Amended Petition")

areas by zip [sic] code in which Kajeet seeks initial designation by the FCC as an LBP ETC to provide Lifeline-discounted broadband service.”

PUD’s original Request asks the FCC to exercise its existing authority under 47 C.F.R. § 54.202(d)(1) to notify Kajeet that its Petition will not be granted automatically within 60 days, and to then hold processing of the Petition in abeyance pending the resolution of critical questions regarding designating authority, enforcement responsibilities, and the role of state regulatory agencies. In its Request, PUD described the importance of the FCC having these issues resolved and incorporated into its designation process before allowing an LBP ETC designation to become effective automatically. Kajeet’s Amended Petition highlights additional reasons for which removing Kajeet’s Petition from the automatic grant process would be prudent. Specifically, such a step would afford the FCC adequate time to properly analyze and process Kajeet’s Amended Petition in accordance with existing statutory requirements, which cannot be accomplished within the 60 day streamlined process.

PUD believes that Kajeet’s Amended Petition further supports the need for the FCC to remove the processing of Kajeet’s petition from the 60 day streamlined process for a variety of reasons. First, the identification of the service area for which ETC designation is to be granted is a fundamental component within the ETC designation process as 47 U.S.C. § 214(e)(6) directs that designation of an eligible carrier is to be “...for a service area designated under this paragraph...”. Setting aside questions as to whether ZIP codes can adequately define a service area, Kajeet’s “definition” of its proposed Oklahoma service area within its Amended Petition is not accurate. There are four (4) ZIP codes³ that are not associated with Oklahoma and, therefore, Kajeet’s Petition is deficient in meeting the requirement to identify the service area within which

³ The following ZIP codes are incorrectly associated with Oklahoma in Kajeet’s Amended Petition at Exhibit – Lifeline Broadband Provider Requested States: 74194, 74189, 74183 and 00067.

it seeks ETC designation. This creates problems for the FCC as it cannot provide an accurate designation, at least as to Oklahoma, without additional research and analysis of the Kajeet application and, ultimately, a correction being made by Kajeet.

The identification of the service area for purposes of ETC designation, based on ZIP codes (which PUD does not believe is adequate for compliance with the rules),⁴ should not be an exceptionally challenging undertaking. However, regardless of complexity, a petition for ETC designation must be complete and accurate, and, as demonstrated by Kajeet's Amended Petition, time must be taken to review such applications. PUD does not believe the streamlined 60 day automatic approval process allows adequate time to identify and correct such errors or, secondly, to perform the more substantive public interest analysis required by statute.

PUD believes grant of a petition for ETC designation in a rural service area on an automatic basis unnecessarily constrains or, more likely, precludes the FCC from complying with the public interest requirement found at 47 U.S.C. § 214(e)(6) and, without any further action or scrutiny by the FCC, would be inconsistent with the FCC's own expectations.⁵ This is of particular concern when qualification for streamlined processing is based on activities and requirements that are unrelated to the provision of Lifeline services.⁶

⁴ See, *Federal-State Joint Board on Universal Service, Report and Order*, WC Docket No. 96-45 (released March 17, 2005) ("ETC Designation Order") ¶ 65 which specifies that all future ETC designation orders adopted by the Commission will include 1) the name of each ILEC study area in which designation is granted; 2) a statement that the designation is for all or part of an ILEC study area; and 3) a list of wire centers in which the ETC has been designated. Nowhere in the rules is there a provision for defining service area by ZIP codes.

⁵ *ETC Designation Order*, released March 17, 2005, ¶ 42. "We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carriers." (footnote omitted). It is clear that relying on a petitioner's "self-certification" of public interest benefits is not an acceptable substitute for a review of actual facts and circumstances by the granting authority.

⁶ 47 C.F.R. § 54.202(d)(1) allows a petition for LBP designation to be deemed granted in 60 days of submission of the filing if the petitioner has offered broadband Internet access service to the public for at least two years before the filing and serves at least 1,000 *non-Lifeline* customers with voice telephony and/or broadband Internet access services as of the date of the filing. (emphasis added) There are no specific requirements or considerations for the capabilities to provide Lifeline supported services in rural service areas.

Further, the FCC, in its *Memorandum Opinion and Order*, WC Docket Nos. 09-197, 11-42, released April 15, 2013, in which the FCC granted "...limited forbearance from the requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commissions rules that the service area of an eligible telecommunications carrier (ETC) conform to the service area of any rural telephone company serving the same area" explicitly states the requirement for an affirmative determination of public interest. The FCC stated:

The Act already requires designating commissions to affirmatively determine that designating a carrier as an ETC within a rural service area is in the public interest and that determination is not affected by this grant of forbearance." (§ 13) (footnotes omitted)

The Commission recognizes all of the important issues raised by commenters in determining whether a particular carrier has met the requirements to become an ETC for the limited purpose of receiving Lifeline support, all of which will be addressed by the designating authority when a carrier submits an application requesting designation. Designating authorities will continue to make an independent assessment as to whether designating a carrier as an ETC within a rural service area is in the public interest." (§ 15) (footnotes omitted)

We also note that state commissions and this Commission are still required to make an independent assessment as to whether granting a carrier ETC designation is in the public interest before including any part of a rural service area in such a carrier's service area." (§ 18) (footnotes omitted)

Clearly, there is a requirement for a public interest assessment and finding to be made in conjunction with the designation of an ETC. For instance, PUD observes that Kajeet, in its Amended Petition, "intends to offer Lifeline-supported BIAS in the entirety of that geographic area through partnerships with schools and school districts." How does Kajeet's stated intention to offer Lifeline service comport with 47 C.F.R. § 54.405(a) which requires an ETC to "make available Lifeline service, as defined in §54.401, to qualified low-income consumers"? Will Kajeet's service be made available to all qualifying low-income consumers or just those with some connection to a particular school or school district? PUD makes no judgment as to the

value or benefit of what appears to be a unique service, but does offer this as an example of a question that PUD would expect to be addressed within the review and public interest assessment process required by statute. Also, PUD believes that undertaking such a review process and making a public interest finding, as required by statute, would give direction to other innovative service providers that may currently be hesitant to seek participation in the program, or otherwise not believe their service would be compliant with the rules.⁷

In this case, 20 days passed between the filing of Kajeet's initial Petition and the filing of the Amended Petition which attempts to define Kajeet's requested service area which we now know is not accurate, at least with regard to Oklahoma. As of this filing, the FCC is now 41 days into the 60 day streamlined process that results in automatic approval. This demonstrates that the automatic grant process, specifically in the case of Kajeet, and at least as it relates to Oklahoma, does not provide adequate time for the FCC to review the application in compliance with the applicable statutory requirements. Accordingly, PUD again urges the Commission to exercise its existing authority and notify Kajeet that its petition for designation as a LBP ETC will not be granted automatically, and then take the time necessary to perform a review and reach a determination in accordance with the rules and statutes.⁸

II. Service Area Requirements

Setting aside issues of accuracy, PUD does not believe that Kajeet's use of ZIP codes as the means with which it attempts to define the service area for which it is seeking ETC designation complies with the statutory requirements. 47 U.S.C. § 214(e)(6), under which the

⁷ PUD does not prejudge whether Kajeet's service is compliant with the rules. That is a question for the designating authority.

⁸ Also, PUD continues to assert that the FCC, in addition to gaining adequate time for review of such an application, should also hold the actual processing in abeyance in order to gain the benefit of the D.C. Circuit Court's ruling on NARUC's Petition for Review and the FCC's response to the Pennsylvania Public Utility Commission's Petition for Clarification.

FCC is granting such ETC designations, indicates that the Commission shall, in the case of non-rural areas, and may, in the case of areas served by rural telephone companies, designate ETCs for “a service area.” While the Commission has latitude to designate the service area in the instance of non-rural areas, 47 U.S.C. § 214(e)(5) specifies a definition of “service area” when the designation involves an area served by a rural telephone company.⁹ It states:

In the case of an area served by a rural telephone company, “service area” means such company’s “study area” unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of this title, establish a different definition of service area for such company.

Kajeet, in its Amended Petition, does not provide any method or indication that would allow the FCC to understand or otherwise identify, based on the ZIP code list provided, the specific study areas associated with areas served by the rural Oklahoma telephone companies in which ETC designation is requested to be granted. Without identifying the study areas, any designation granted in areas served by rural telephone companies based solely on ZIP codes would not comply with the statutory designating authority found at 47 U.S.C. § 214(e)(6).

Further, the use of a ZIP code list to define the service area requested by Kajeet, as well as the streamlined automatic grant process itself, runs contrary to the FCC’s ETC designation administrative requirements. The FCC has mandated that “...all future ETC designation orders adopted by the Commission will include: (1) the name of each incumbent LEC study area in which an ETC has been designated; (2) a clear statement of whether the ETC has been designated in all or part of each incumbent LEC’s study area; and (3) a list of all wire centers in which the ETC has been designated, using either the wire center’s common name or the

⁹ This definition is found within the rules at 47 C.F.R. § 54.207(b). This subsection also specifies the process by which an area different from a study area can be redefined.

Common Language Location Identification (CLLI) code.”¹⁰ PUD’s experience is that ZIP codes do not readily translate to wire centers or ILEC study areas. Accordingly, it would seem difficult, if not impossible, for the FCC’s streamlined process to allow adequate time to meet these administrative requirements.

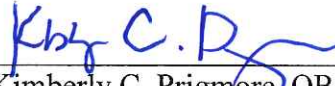
These unique statutory requirements for ETC designation in rural service areas create additional obligations for the designating authority. Unless all the statutory requirements for the analysis and processing of Kajeet’s request for ETC designation can be met within (and addressed by) the 60 day streamlined, automatic grant process, the FCC should notify Kajeet that its Amended Petition will not be granted automatically and then take the time necessary to perform a review and reach a determination in accordance with the rules and statutes.

III. CONCLUSION

PUD continues to urge the Commission to notify Kajeet that its petition will not be granted automatically under the streamlined process. Only then can the FCC have adequate time to process Kajeet’s petition in accordance with statutory and administrative requirements, and allow for identification and correction of all errors, to include those observed by PUD in Kajeet’s description of its proposed service area. Additional time would also afford the FCC the ability to perform the required public interest analysis for those areas of requested designation that are served by rural telephone companies. In addition to the issues described above, PUD continues to request that the FCC, once Kajeet is notified that their petition will not be automatically granted, hold the processing of the petition in abeyance pending 1) the D.C. Circuit Court’s ruling on NARUC’s Petition for Review; and 2) the FCC’s response to the Pennsylvania Public Utility Commission’s Petition for Clarification.

¹⁰ *ETC Designation Order*, released March 17, 2005, ¶ 65.

Respectfully submitted,



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